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Punishments and Judicial Response – A Critical Review

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Punishment is used to maintain social order and uphold the rule of law. Unrestricted sentencing discretion in court may result in public distrust of the judicial system, a breakdown in the rule of law, and an increase in crime. The essay focuses on the goals of criminal law and punishment, as well as what they may accomplish in terms of perpetrators and victims in transitional circumstances. With regard to those who have been wronged, it advocates a shift from victim-centered views to those that focus on consequences and justice. In terms of society, it suggests that the primary objective in transitional circumstances should be positive general prevention. Both interpretations arrive at the conclusion that survivors' concerns should be balanced against the other social goals, and that a versatile attitude to prosecuting and/or punishing offenders should be empowered in the pursuit of the best optimum implied possible to secure the ultimate goal of maintaining social order.

Keywords: *punishment, human rights, justice system, role of judiciary, theories of punishments.*

INTRODUCTION

Crime and punishment are linked as “cause and effect correlatives in order to maintain a peaceful and happy human community.” There is a corresponding effect to every step taken. Though many ideas explain “punishment for those who disrupt the social fabric of the community, there is no universally applicable explanation for punishment.” Traditional criminal law is challenged by the idea that punishment is the sole way of compensating

victims of egregious human rights breaches, or even as a right of the victims themselves. Punishment is an essential part of the criminal justice system. 'Crimes' are only categorized as such because of the usage of the word punishment. We've seen in the past that without sanctions, society's crude and basic impulses couldn't be tamed. The rulers used the term 'punishment' against their people in order to keep the populace afraid of their rulers' capabilities and powers. As a form of retaliation against someone else, punishments were occasionally administered. Scolding or light beating from parents is the most prevalent kind of punishment that all of us can identify with. Which conceptions of punishment apply to significant criminal offenses? What was the process of their growth? What are the advantages and disadvantages of different methods of retribution? In this article, we will attempt to address all of these concerns and determine how far the different Theories of Punishment are appropriate in today's society.

THE OBJECTIVE OF THE STUDY

This research helps us understand the history and origins of punishment laws in India, as well as their significance in governing society and to establish the rule of law. This work contributes to the illumination of the idea of proportionality of punishment which is governed by well-established Supreme Court and high court judgments. This project will discuss the landmark case of "*Bachan Singh v the State of Punjab*¹."

SIGNIFICANCE OF THE STUDY

This research will assist us in properly understanding the concepts of punishment, its origin, and how it is relevant to the present world with the help of *Bachan Singh v the State of Punjab*. In which Supreme Court had explained the reasonable restriction and proportionality of punishment. Relevant content from several sources has been used to enhance the project's fundamental concepts, which are guided by well-established judgments of the Supreme Court and high courts. Also, while initiating this work, many philosophers' theories were drawn upon and properly incorporated into its creation.

¹ *Bachan Singh v State of Punjab* AIR 1980, SC 898

SCOPE OF THE STUDY

The study is limited to various National and International, Legislation, judgments, and other such documents that explicitly discuss the legal framework related to punishments not just within but outside the Territory of India. Along with these researcher has gone through some prominent online databases to know more about this.

LITERATURE REVIEW

This paper goes beyond the prior literature by focusing on the empirical assessment of the actual implementation of the institutional deterrence and prevention mechanisms. The researcher has gone through several sources online, like SCC Online, LexisNexis India, and Legal Service India, to collect information for this project.

RESEARCH METHODOLOGY

Punishments and judicial response – a Critical Review is drawn on both primary and secondary data from various sources. Many different constitutions were used to compile the great majority of the data. The secondary materials included in this study came from a variety of sources, including research papers published in reputable journals, articles published in numerous blocks, judgments issued by the Hon'ble High Courts and The Supreme, textbooks, and papers.

MEANING AND DEVELOPMENT OF PUNISHMENT IN INDIA

Punishment is some kind of pain or punishment that is allowed by law and is given to someone who does something bad or doesn't do something right. It can be given to someone who does something bad or doesn't do something right, or it can be given to someone who doesn't do something right. It is a disciplinary action taken against someone who has violated the established rules and standards of a given society. In addition to physical pain, the effects of punishment may include psychological anguish, loss of freedom, loss of reputation, and, in rare cases, the loss of one's possessions.

DIFFERENT TYPES OF PUNISHMENT IN ANCIENT INDIA

According to the history of the prison system, punishments were harsh, violent, and vicious in nature. The purpose of the punishment was to discourage and punish. The number of offences was reduced as a result of his penal process. Punishments of this kind fall into the categories of:

Punishment by death: Capital punishment refers to the legally sanctioned execution of somebody as a punishment for a crime, often known as the death penalty for that crime. The death penalty is a government-sanctioned system in which someone is executed by the state for committing a crime. In ancient times, the death penalty was used to punish even the most minor of offenses. It is the most severe type of retaliation. The methods used to carry out death punishment have changed throughout time.

Execution of Corporeal Punishment: As a punishment, it entails inflicting some kind of bodily harm on a person. Additionally, it is referred to as "physical punishment." It is a kind of punishment for breaking the law that includes the imposition of physical pain on the victim's body. The goal of corporal punishment is not only to punish the perpetrator but also to deter the criminal or any other person from committing the same act in the future.

Social Punishments: With this penalty, a person is prohibited from entering into any form of contract with other people or from relocating to other locations where he has no contract with other people who can assist him in any way, or he will be subject to punishment for doing so.

Financial Penalties: Additionally, it is referred to as an "impossible fine." For small violations of traffic regulations, tax laws, and petty crimes, it served as the most popular form of punishment. Compensation for the victims and prosecution fees are also included.

PUNISHMENT IN CONTEMPORARY INDIA

Punishments have developed with time, even though certain communities still use the harsher, crueller kinds of punishment that were used in the past. As of now, the severity of the sentence is based on the specific offence that was committed. If a person commits a heinous

act, he will be subject to the worst penalties. In modern industrialized countries, punishments include fines or jail sentences, or both. The goal of this punishment is to repair the wrongdoing rather than punish the wrongdoers themselves. Offenders are entitled to the following types of punishment under Section 53² of the Indian Penal Code:

A Penalty of Death (Death Sentence): It is well known that capital punishment is the execution of a person by a court of law. In modern times, death punishment is the most severe penalty that may be applied to a crime that warrants it. It is one of the most hotly contested issues in contemporary penology. It is not given out for minor infractions as it was in the past. It is provided in the event of a heinous crime. Society's understanding of punishment has evolved throughout time. According to the Indian Penal Code, this punishment is only given in the "rarest of rare situations." Sections 121, 132, 194, 302, 303, 305, 307, 364A, 396, 376A, and 376E³ of the Indian Penal Code allow the court to sentence a person to death for certain crimes.

Imprisonment for life: A person who is sentenced to life in prison will spend the remainder of his or her life behind bars. There are few better alternatives to the death penalty for crimes for which there are two possible punishments. Life imprisonment is mandatory, although, in the event of a fractional sentence, the maximum sentence should be 20 years under Section 57⁴ of the Indian Penal Code. In legal terms, imprisonment is the act of detaining someone as a kind of punishment. The three sorts of imprisonment are as follows:

Rigorous Imprisonment: In general, this term refers to "hard work." Offenders in this sort of confinement perform hard labour or hard work, such as grinding maize, excavating the dirt, fetching water, and so on. This style of prison confinement does not require the criminal to do any kind of labour, although they might be requested to do so if they so desire.

Solitary confinement: It is the practice of keeping a prisoner secluded from the outside world and preventing them from communicating with others. It varies from the belief that a person's

² Indian Penal Code, 1860, s 53

³ Indian Penal Code, 1860, s 121, s 132, s 194, s 302, s 303, s 305, s 307, s 364A, s 396, s 376A, & s 376E

⁴ Indian Penal Code, 1860, s 57

feelings of loveliness might have an impact on his or her intellect and cause him or her to shift their perspective. Under the Indian Penal Code, solitary imprisonment is permitted.

Forcible Taking of Property: "Forfeiture" in the dictionary is anything that is lost or forfeited in order to pay back a debt, and "forfeiture" in the legal sense denotes the loss of property or money. The Indian Penal Code has three provisions describing forfeiture, and they are as follows:

- Section 126⁵ prohibits the possession of property that has been or is intended to be used in the commission of depredations against the territory of friendly nations.
- Sections 125 and 127⁶ of the Indian Penal Code prohibit the receipt of property with the knowledge that the property has been obtained by means of war or robbery.
- Section 169⁷ prohibits the acquisition of real estate by a public official who is prohibited from making such purchases.

Financial Punishment: The term "fine" refers to the imposition of a monetary obligation on an accused as a result of the crime that he or she has committed. There are several crimes that are punishable by a fine as well as imprisonment. The amount of the fine is determined by the instructions of the court.

EXPLAINING VARIOUS THEORIES OF PUNISHMENT

Deterrent Theory: It keeps the offender from committing another crime in the future, as well as serves as a role model for those with criminal inclinations. It is assumed that humans use pleasure and pain as a means of controlling their conduct. Even for small offences, inhumane penalties are meted out. This is still common practice in several cultures today. Retributive theory (also known as "tit for tat" or "an eye for an eye"): is a theory that is exclusively motivated by vengeance or retribution. It is therefore countered by a punishment that causes the criminal to feel the same suffering as the offence. Theories that claim punishments like

⁵ Indian Penal Code, 1860, s 126

⁶ Indian Penal Code, 1860, s 125, 127

⁷ Indian Penal Code, 1860, s 169

these don't deter criminal behavior argue that the primary goal of punishment is to make the offender feel bad about him or herself. This was a common practice in ancient civilizations. Preventive theory: It is founded on the idea that "prevention is better than treatment." The purpose of this is to make the threat public rather than just execute it once in a while. This idea enables punishment to be both humanitarian and practical. Reformative theory: In this case, the punishment is intended to alter the offender's mindset. Punishment should be applied in an effort to help the offenders change their ways. This ideology abhors all forms of physical punishment. Rehabilitating criminals into law-abiding individuals is a top priority. Socialistic theory: The prison sentence very often carries with it a stereotype that cannot be purified by the perpetrator. Even if someone is completely redeemed while serving his term, society regards him as an ex-convict. Whatever transformation he underwent while serving his term is rendered futile by society's refusal to recognize him as an improved person.

SECTION 53 OF THE INDIAN PENAL CODE'S DEFINITION

In India, the criminal justice system focuses on two goals: preventing crime or lowering crime rates, as well as rehabilitation of criminals. Sentencing is left to the courts, which have been granted broad latitude in light of their constitutional authority and their responsibility to impose a sentence that is both proportional to the offence and the offender. Section 53⁸ of the Indian Penal Code (IPC) specifies the types of penalties that offenders are subject to under this provision: death penalty, life imprisonment, imprisonment for a lower time as hard or simple, fine, or a combination of imprisonment and fine. Critics claim that this code is retributive and punitive in nature and that it does not support or promote current criminological tendencies. The Trial Court has exclusive authority over the imposition of punishments. It is crucial to differentiate between the form of evidence and the circumstances in which the act was committed after the prosecution has persuaded the Court by showing the accused's guilt beyond a reasonable doubt. It's vital to remember that the severity of the sentence has nothing to do with the kind of evidence presented. The Court must take into account mitigating factors such as the fact that the crime was committed inadvertently in the heat of passion provocation,

⁸ Indian Penal Code, 1860, s 53

the age of the defendant, whether any general exceptions apply, and whether any clauses under Section 300 of the Indian Penal Code are acceptable when the defendant is guilty of a crime.

PUNISHMENTS IN ACCORDANCE WITH SECTION 53 OF THE IPC

The following are the consequences that violators face if this Code's provisions are accompanied:

Section 53 of the Indian Penal Code specifies that a judge might sentence a criminal to one of five sorts of punishments. A person may be sentenced to one of these punishments or a combination thereof. Section 73⁹ also permits solitary confinement as a form of punishment.

1. Execution as a Form of Penalty

Capital punishment is another name for punishment by the method of execution. A person is hung until he or she dies as a result of this punishment. The government has approved this punishment and a court has ordered it. It is only offered in the most extreme of circumstances. Only the most serious offenders will face this penalty. Under the Indian Penal Code (IPC), death is the most severe penalty that may be handed out. There are arguments for and against retaining the death penalty as a penalty. *Jagmohan Singh v State of Uttar Pradesh*¹⁰ asserted that the death sentence is unconstitutional and, thus, unenforceable as a punishment. Despite the Supreme Court's decision, the death sentence is still legal. The court ruled that denying a person's life is legally permissible provided it is done in accordance with the law. Sections 121, 132, 194, 302, 303, 305, 307, 364A, 376E, 396¹¹, and so on of the Indian Penal Code provide for the death penalty or capital punishment. In these sections, the court is not required to impose the death penalty. Previously, death punishment was mandated for anyone convicted of the crime described in Section 303¹², i.e., murder by a person serving a life sentence. Articles 14

⁹ Indian Penal Code, 1860, s 73

¹⁰ *Jagmohan Singh v State of Uttar Pradesh* 1973 AIR 947, SCR (2) 541

¹¹ Indian Penal Code, 1860 (n 3)

¹² Indian Penal Code, 1860, s 303

and 21¹³ of the Constitution were found to have been violated by the death sentence in *Mithu v State of Punjab*¹⁴. In *Bachan Singh v the State of Punjab*¹⁵, the Supreme Court affirmed the legality of the death punishment, but only in the rarest of circumstances. If this is the case, then the death penalty may be applied. The court did not go into detail on what exactly fell under this group. A few times, the court has ruled in favor of the meaning of "rarest of the rare cases," including incidents like honour killings and other mass murder crimes. Section 54¹⁶ of the Indian Penal Code allows the relevant authorities to commute a death sentence for any other penalty stipulated in the IPC under Section 54.

2. Life Sentence

Act XXVI of 1955¹⁷ changed the phrase "transportation for life" to "imprisonment for life." An individual who has been found guilty of a crime and sentenced to life in prison without the possibility of parole or any other kind of early release is considered to have received the worst possible penalty. When the expression "jail for life" is used, it refers to incarceration for the rest of the person's natural life. Section 57 of the Code specifies a 20-year maximum sentence for life in prison. No matter how long you spend behind bars, you will always be subjected to the most strenuous conditions imaginable. It is permissible for the relevant authorities, under CrPC and IPC sections 433(b)¹⁸ and 55¹⁹, to reduce or suspend a life sentence to a period of imprisonment of not more than 14 years. The State Government has faith in the prisoner since it is under its control, and in this instance, the State Government might ask for the sentence to be reduced. A sentence of eternal torment, on the other hand, may not be shorter than 14 years in length.

¹³ Constitution of India, 1950, art 14 & 21

¹⁴ *Mithu v State of Punjab* 1983 AIR 473, SCR (2) 690

¹⁵ *Bachan Singh* (n 1)

¹⁶ Indian Penal Code, 1860, s 54

¹⁷ Code of Criminal Procedure (Amendment) Act, 1955

¹⁸ Code of Criminal Procedure (Amendment) Act, 1955, s 433(B)

¹⁹ Indian Penal Code, 1860, s 55

3. Imprisonment

Taking away a person's freedom and locking them up in a jail cell is what it means to imprison them. Section 53 of the Indian Penal Code defines two types of imprisonment: The term "Simple Imprisonment" refers to the sort of prison sentence in which an incarcerated person is not subjected to any form of labour. Light responsibilities are all that they are expected to do. Only minor offences, such as slander, are punishable by simple imprisonment. Prisoners who have been convicted of a crime and sentenced to hard labour, such as farming, carpentry, fetching water, etc., are incarcerated in "rigorous" imprisonment. For the crimes listed in the next two sections, incarceration is mandatory (no alternative for simple imprisonment is available).

4. Asset Forfeiture

Forfeiture entails the forfeiture of the defendant's assets. State authorities confiscate a criminal's property as part of this punishment. In this case, the individual is to blame for their own actions. Immovable or moveable property may be forfeited. Under Sections 126²⁰ (depredation on territories of Powers at peace with the Government of India) and 127²¹ (depredation on territories of Powers at War with the Government of India), property forfeiture is authorised as a punishment.

5. Fine In accordance with the IPC

The court has the option of imposing a fine as a form of punishment in lieu of or in addition to the jail. It is up to the court to determine whether a given instance warrants either a fine or an indeterminate sentence of jail. As stated in Section 64²² of the IPC, the court has the option of imprisoning anybody who fails to pay a fine.

²⁰ Indian Penal Code, 1860, s 126

²¹ Indian Penal Code, 1860, s 127

²² Indian Penal Code, 1860, s 64

6. Confinement in solitary

Section 73 of the IPC defines it. Solitary confinement is the practice of keeping a convict separated from the rest of the world. Loneliness is said to have a calming effect on criminals and help them change their ways. No one will be held in solitary confinement for more than three months at a time. Section 73 lays out the scale in the following manner: As long as the person is in prison for less than or up to six months, they can't be kept in solitary confinement for more than one month. As long as they are in jail for more than one year, they can be kept in isolation for up to three months, but they can't be kept in isolation for more than that.

Section 74 of the IPC states that solitary confinement cannot be granted for the whole period of incarceration, but must be enforced at regular intervals. If imposed for more than 14 days at a period, a sentence of solitary confinement throughout the duration of incarceration is unconstitutional. The maximum number of days in solitary confinement that may be served in one month during a sentence of more than three months is seven.

VICTIM-ORIENTED THEORIES OF PUNISHMENT

The first part of our research will be the ostensibly positive impacts of punishment for crimes on the victim. "As a method of satisfying the victim, or even as a victim's right, we will examine numerous ideas developed in criminal law and philosophy that may serve as a theoretical basis."

1. The crime as a moral obligation or a need for justice: retributionist beliefs from the ancient era: As with Kant's creation of criminal punishment, "victim-oriented theories of punishment emphasise punishment as an imperative or obligation (of society or the state), and they emphasise justice as a foundation, the demand for talionic punishment regardless of political or criminal factors, and the potential absence of preventive needs, as well as the necessity of the full implementation of the sentence, imposed." Some scholars have thus labeled as retributions beliefs those who advocate for the state's obligation to punish and the victims' right to punish. There are, nevertheless, major distinctions between the two schools of thought. It's important to note that the traditional theory of retribution focuses on the past

since it assumes that the perpetrator deserves to be punished. Instead of looking to the past or future, the victim-oriented view of criminal punishment focuses on the here and now.

2. Punishment as a victim's right resulting from the crime: an argument based on historical development. Some writers have attempted to use the progression from revenge to punishment to support the victim's entitlement to the punishment of the criminal. It is maintained that the state has an obligation to exert its monopoly on punishment since private justice is prohibited and instead given to the state. In order to make such an argument, one must establish the existence of a form of natural right, not only to self-defense but also to punishment, the existence of which seems more than a little questionable. Furthermore, more than a century after its establishment, state punishment is no longer viewed as a fictional act of bestowing by the victim; rather, it is the result of the democratic legislator's desire.

3. Punishment as a measure of ameliorating the victim's condition: Some writers say that punishment serves that aim if the goal of punishment is to make the victim feel "better." An important aspect of punishing an offender is to make them realise their actions were not the result of chance or poor luck, but rather the result of their own faults and wrongdoing.

Victims are protected from feeling ashamed by the symbolism of the offender's punishment, which ensures that the incident will never happen again. Finally, it shows society's sympathy and solidarity, which aids the victim's "re-socialization" or reintegration.

4. Punishment as the act of removing or ceasing to cause damage to the victim, as opposed to an injury to a legal interest: In contrast to (or even in conjunction with) the foregoing perspectives, we find those who argue that a criminal crime always causes injury to the victim, in addition to the particular harm produced to the protected legal interest, along similar lines but with various subtleties. A criminal penalty for the perpetrator would be the only way to stop the damage or have it completely erased from society. The argument goes on to say that criminal punishment serves the purpose of putting a stop to the victim's confusion in social life, which might result from a lack of or loss of faith in the law if no penalty is applied. There are many who believe it serves a nobler goal, such as reclaiming the victim's dignity and

reinforcing the victim's social value or putting a stop to damage to their reputation that will continue as long as the perpetrator is not brought to justice and punished for his or her actions. Victim-oriented punishment has also been compared to positive general prevention by claiming that criminal sanctions strive to uphold not just the legal values that were violated, but also those that were violated by the perpetrators. To put it another way, the goal of criminal punishment is to "re-socialize the victim." According to this view, a departure from the viewpoint given in the preceding section is justified by the notion that the lack of punishment is what causes the damage to continue to be committed, and that it is the state's responsibility to punish in an attempt to put a stop to the suffering.

THE LEGISLATIVE FRAMEWORK AND CRIMINAL JUSTICE SYSTEM

India has two comprehensive criminal laws that address both substantive and procedural aspects of criminal law. There are many different types of penalties that may be given to offenders under the Indian Penal Code, 1860 (IPC), which specifies the offences and their punishments. In addition to the IPC, "there are some special and local laws that deal with crimes that aren't covered by the IPC, such as the Narcotic Drugs and Psychotropic Substances Act of 1985²³, the Prevention of Food Adulteration Act of 1955²⁴, the Prevention of Corruption Act of 1988²⁵, and the Sexual Harassment (Prevention, Protection, and Rehabilitation) Act of 2013²⁶, to name a few." These specific laws may have their own set of rules for arrest, bail, and evidence, among other things. Nonetheless, the IPC remains the primary basis for classifying behaviour as illegal. The Criminal Procedure Code, 1973²⁷, combines all of the procedural information about how the criminal justice system works and how it is run. Thus, the Indian Evidence Act, 1872²⁸, and the Indian Penal Code constitute the foundation of criminal justice administration in India.

²³ Narcotic Drugs and Psychotropic Substances Act, 1985

²⁴ Prevention of Food Adulteration Act, 1955

²⁵ Prevention of Corruption Act, 1988

²⁶ Sexual Harassment (Prevention, Protection, and Rehabilitation) Act, 2013

²⁷ Criminal Procedure Code, 1973

²⁸ Indian Evidence Act, 1872

Indian Penal Code, 1860: The third chapter of the IPC focuses on punishments. “Section 53 principally contemplates five types of penalties. Death Sentence, Life Imprisonment, Imprisonment (simple or harsh), Forfeiture of Property, and Fine are some of the options available. Solitary confinement is allowed under Section 73.” Both sections 54 and 55 deal with commuting a death sentence, while only “section 54 deals with a commute of life imprisonment.” For the purposes of Section 57, “life imprisonment” is defined as incarceration for a total of twenty years. Life imprisonment has taken on a new meaning since the Criminal Law Amendment Act of 2013, which introduced sections 376A, 376 D, and 376E to the definition of the term.

The Criminal Procedure Code of 1973: The Cr PC enables high courts and sessions courts to inflict any of these penalties, with the exception that a death sentence issued by a session’s court must be affirmed by the state's high court. It is apparent that the subordinate judiciary has the ability and jurisdiction to try and punish individual instances.

INDIVIDUALISATION OF PUNISHMENT AND THE ROLE OF JUDICIARY

In general, the IPC and other particular criminal statutes provide for a discretionary sentencing paradigm. There are defined maximum sentences for certain offences, and the judge has the ability to decide what kind of sentence is appropriate in every individual instance after a finding of guilt. On the issue of how a proper sentence should be determined, India's Law Commission in its 47th report stated that a proper sentence is a combination of many aspects, along with the nature of the crime, exceptional cases or exacerbating the crime, the previous criminal record, if any, of the perpetrator, his maturity level, his competence or social record, his history with regard to education and family life, sobriety, and so on. Furthermore, Sections 235(2), 248(2), and 255²⁹ of the Criminal Procedure Code establish a separate part of the sentencing procedure for determining penalty after conviction (2). On an independent day, usually set after the verdict is announced, both parties to the case may present evidence before the court about circumstances pertinent to punishment. If a sentence is handed down without a chance for a hearing, it will be overturned on appeal since it violated

²⁹ Criminal Procedure Code, 1973, s 235(2), 248(2) & 255

the law's mandate. The final verdict is always rendered after the completion of the hearing on sentencing, signaling the end of the trial. An individual may be released from prison on probation for good behaviour or after an admonition by a judge under the terms set out in the CrPC Act, 1958. The court may impose a fine, reparation, jail time, or even the death penalty, but only if it has a good reason for doing so. Sections 432 and 433³⁰ of the Criminal Procedure Code “provide the relevant government with the authority to reduce, remit, or commute a sentence. Life imprisonment may be reduced to a sentence of no more than 14 years, even if the sentence is reduced to life imprisonment.”

THE LEGISLATIVE SYSTEM GOVERNING LIFE IMPRISONMENT VS THE DEATH PENALTY

Until March 31, 1974, the death penalty and life in prison for murder and other capital offences were considered "normal" under section 354(3)³¹ of the Criminal Procedure Act of 1973, which amended section 354(3) of the Criminal Procedure Act of 1898. Because of the new legislative policy, “it is clear from the text of Section 354(3) that the normal sentence for murder and six other capital crimes under the Penal Code is to be imprisoned for life (or for a number of years). The death penalty is an anomaly.” 354(3) CrPC says that when someone is convicted of an offence punishable by death or, in the case of an offence that can be punished by life in prison or by a term of years, the judge must explain why they were given that sentence. All of these clauses together show that the court in India has a key role to play in the sentencing process and has unrestrained authority to do so. The sentencing process in India is thus judge-centric rather than a principled sentence-centric one. Analysis of the following Indian Supreme Court rulings supports this claim even more.

PUNISHMENT JUSTIFICATION: THE INDIAN SUPREME COURT'S PERSPECTIVE

In instances involving heinous crimes, the Supreme Court of India has shown an ad-hoc and shifting approach toward the issuance of the death sentence or life imprisonment via its judgements. Despite the historic Constitution Bench rulings underlining the necessity to show

³⁰ Criminal Procedure Code, 1973, s 432 & 433

³¹ Criminal Procedure Code, 1973, s 354(3)

prudent discretion when dealing with instances where the death penalty is specified by law as an alternative punishment, this continues to be the case. The Supreme Court opinions on what theories or reasons of punishment should be used in criminal sentencing have not been consistent. Different sets of judges sitting on the Supreme Court at the same time have criticised their fellow judges for sticking to ideas that vary from their own chosen theories. Because of this, we find that some judges' favoured methods are given prominence in the decisions they hand down over a period of time. Sentencing may be a difficult issue to resolve, as the court has recognised, because of the conflicting conceptions of reformation, deterrence, and revenge that go into it. The following section examines how the Supreme Court's precedent-setting decisions on sentencing have evolved throughout time. Some of the most important Supreme Court decisions are being used to show how the court has been able to manage the two opposing claims: that people should get the same punishment for the same crime and that people should get punishment based on who they are and what happened to them.

The Supreme Court's ad hoc approach to punishing offenders, notwithstanding the apparently defined limitations for using discretion, still appears in some of the court's judgements. The learned judge of the State of Punjab brought Bachan Singh to trial, found him guilty, and sentenced him to death under Section 302 of the Indian Penal Code for the killings of Desa Singh, Durga Bai, and Veeran Bai. The plaintiff led others (all of whom were acquitted) into a heated conflict between the parties, during which they equipped themselves with spears and other deadly weapons and delivered several deep-cutting fatal assaults to the deceased, resulting in their deaths. The three killings were characterised as wicked and cruel. The appellant's death sentence was upheld, and his appeal was rejected by the High Court. He then challenged the decision, expressing his dissatisfaction. On the Supreme Court Constitution bench, the issue at hand was the sentencing process outlined in section 354(3) of the CrPC, 1973, sub-section (3) of the CrPC. With regard to formulating rules, the Supreme Court based its decision on the opinions and feelings of members of the community. Consequently, if any of the following conditions are discernible, the court concluded that the death sentence should be applied for the murder. When the murder is carried out in a

gruesome, hideous, devilish, repulsive, or malicious way so as to infuriate the people, it is considered a gruesome murder. When a murder is done for a reason that demonstrates utter depravity and malice. *Anwar Ahmad vs State of Uttar Pradesh and Others*, In this case, the offender had already served a six-month sentence prior to the Court's formal conviction. Due to the convict's conviction, as well as his "blemish," it was not essential to punish him once more in the name of "retributive punishment," according to the Court, as the family would suffer a great deal of hardship as a result of this.

In the case of *Sri Ashim Dutta Alias Nilu v State of West Bengal*³², it was held that both deterrent and retributive punishments seek to prevent repeat offences by imposing exemplary punishment for a specific offence. Nonetheless, civilisation and cultures are growing at a fast pace. There has been a lot of progress in science and technology. Experts in various fields of study began to think in a new way among the educated and literate. The old adage of "an eye for an eye" and "a tooth for a tooth" no longer holds true when it comes to dealing with criminals. The rule of law cannot be guaranteed by a premise like this. The Supreme Court declared in *Dr. Jacob George v the State of Kerala*³³ that the goal of punishments should be deterrence, progressive, preventative, retributive, and compensating. A preference for one theory over another is not a good punishment strategy. Each theory of punishment should be utilised separately or in combination depending on the merits of the case. In addition, it is noted that "every saint has a past & every sinner has a destiny." Lawbreakers are a part of society, therefore it's up to the rest of us to correct and reform them and help them become better members of society. The purpose of society and law is to prevent crime, which cannot be neglected. *Surjit Singh v the State of Punjab*³⁴ In this case, one of the defendants, a police officer, entered the deceased's residence with the aim to commit rape but was prevented from doing so when the deceased's sons cried out for aid. Another accused advised the cop to murder the victim. Section 450³⁵ of the Indian Penal Code was utilised to hold the accused accountable. On

³² *Sri Ashim Dutta Alias Nilu v State of West Bengal* (1998) 2 CALLT 338 [HC]

³³ *Dr. Jacob George v State of Kerala* 1994 SCC (3) 430

³⁴ *Surjit Singh v State of Punjab* 1996 AIR 1388, SCC (2) 336

³⁵ Indian Penal Code, 1860, s 450

the other hand, the death penalty, sometimes known as the death penalty or capital punishment, is more of a transitory sort of disability.

*State of Gujarat and Anr. v Hon'ble High Court of Gujarat Justice Thomas*³⁶ said that "The Reformative and reparative theories should be given a lot of thought, where the victim(s) of crime or his family members should be compensated from the wages that the criminal earns while in prison." There should be comprehensive laws in place for victims of crime to get compensation from their respective states, according to the Court. The crime is anti-social or socially repugnant if it is done under circumstances that provoke societal outrages, such as the murder of a member of a Scheduled Caste or another minority group. These include "bride burning" and "dowry deaths," when a man kills his wife to remarry for the purpose of collecting dowry again or to marry another lady because of his passion for her. A crime's enormity is referred to as its "magnitude." Innocent children, helpless women, people in positions of power or trust, and public figures who have earned the love and respect of their communities and have been murdered for reasons other than personal gain are all examples of "victims with a personality" in the context of murder.

CONCLUSION

The morality of punishment is "founded on conceptions of deterrence, retribution, just deserts, rehabilitation, incapacity, and, most recently, restorative justice". Theories like these aim to legitimise the punishment of criminals and give an appropriate ethical justification for inflicting damage on others. After this investigation, the researcher identifies punishment as a tool of social control. He'd want to summarise what he's learned about punishment theories as follows: An effort is made to represent punishments as a means of imposing unfavorable conditions on the offender. Though certain theories, such as the reformative and preventative, depend on humanitarian types of punishment, they are vulnerable to serious offenders. Punishments such as retributive and deterrence, as well as the use of fear as a tool to reduce the incidence of crime, aid in managing offenders to some degree. These are significantly harsher than others because they exploit the concept of wrath and retribution. We are all

³⁶ *State of Gujarat and Anr. v Hon'ble High Court of Gujarat Justice Thomas* (1998)

aware that reality is stranger than fiction, and the implementation of these ideas is no exception. Prisons are intended to be places where offenders may be rectified or in some cases discouraged from doing a wrong in the future, however in the modern-day, prisons have become redundant in their purpose and have instead become breeding grounds for hardened criminals who are bred in jail. This is something that criminologists need to look at. As a result, the methods used to carry out the penalty are not foolproof; for example, criminals are able to continue their unlawful activities while they are in jail. Despite the fact that in principle, all of the punishments outlined above would be ideal when applied together, this all turns into a farce when applied in practice.